

26 February 1960

PANEL ON SUBSIDIES AND STATE TRADINGDraft Report on Subsidies

1. The Panel held two meetings on 6 - 11 April 1959 and on 22 - 25 February 1960.
2. At its first meeting the Panel prepared a report (L/970) which was discussed at the fourteenth session. The CONTRACTING PARTIES then "took note of the conclusions and recommendations in the report and authorized the Panel to continue its work on the same lines as before, but taking into consideration the views expressed during the debate." (SR.14/2). The present report incorporates and replaces the Panel's first report.
3. At both its meetings the Panel carried out detailed examinations of the notifications submitted under the Decision of 2 March 1950. It wishes to place on record that it found a distinct improvement in most of the notifications which had been drawn up after its first meeting and which had taken into account the Panel's recommendations.
4. Annex A to this report lists (i) the new notifications made since the Panel's first meeting; (ii) the earlier but relatively recent notifications of other contracting parties; (iii) the governments which have at some time or other indicated that they do not grant or maintain subsidies falling under the scope of Article XVI; and (iv) the governments which up to the time of reporting have not made notifications.
5. The Panel agreed that the type of information requested (as set out in BISD, Third Supplement, page 225) would in general meet the requirements of the CONTRACTING PARTIES, but that in certain respects it would be advisable to specify more clearly the type of information required on specific points in order to meet more fully the intentions of the CONTRACTING PARTIES when they drew up the form of notification at their ninth session. In their examination of the country submissions, the Panel noted that it was frequently the case that countries were not in a position to indicate the subsidy per

unit because the measure of the subsidy was related to fluctuating prices or was based not on the product but on some other criterion (e.g. acreage). In such cases, the Panel recommended that governments should (1) notify the sum, if any, which is budgeted for the purpose, and (2) give detailed figures for the operation of the measure in the previous year, indicating the total amount, the quantity of the product, and the average subsidy per unit. The Panel observed that where countries had in their notifications adopted the practice of giving itemized information on the four sections under paragraph 1. of the questionnaire in L/809 (i.e. background and authority, incidence, amount of subsidy and estimated amount of unit) separately under each specific commodity heading, the task of absorbing and analysing the information provided was rendered much easier than where countries had adopted the practice of grouping commodities together and had given information on all commodities under each section of the questionnaire. In this connexion, the Panel recommended that countries conform so far as possible to the headings and sequence in the agreed form of notification.

6. The Panel had detailed discussions on Section II of the questionnaire (BISD, Third Supplement, page 225) which requires countries to notify the effects of subsidy. The Panel noted the views expressed by several contracting parties at their fourteenth session that, following the recommendation of the Panel, Section II of the questionnaire shall be revised to obtain information about the effects of subsidies.

7. The Panel noted that little or no attempt had been made by countries particularly in the notifications which preceded its first meeting, to give information on this Section, and that, where information had been given, it was doubtful whether this reflected fully the intentions of the CONTRACTING PARTIES when they drafted this Section of the questionnaire. The Panel considered that the CONTRACTING PARTIES, in drawing up this Section had had it in mind that countries should give some indication of the quantitative effects of subsidy arrangements, i.e. the effects on actual volume of imports and exports, and noted that where countries had responded to the request for information on this Section they had not supplied a quantitative assessment.

of the effects in relation to imports and exports but had instead confined their information to the philosophies on which their internal policies were based and justification for their subsidy arrangements. The Panel therefore recommends that all contracting parties should include in any subsequent notification statistical data covering a representative period of domestic production, consumption, imports and exports of the product concerned. These figures should cover the last three years; and a previous representative period (to be notified only once for that product) preceding the entry into effect of the measure or preceding the latest major change in that measure. It is realized that statistical data would not answer all questions but, as indicated earlier in this report, they would provide the most useful practical guidance to contracting parties in their attempts to estimate the effects of a subsidy. The Panel also recommends that contracting parties should say what they consider to be the trade effects of any subsidies and to explain why they think the subsidies will have these effects. They would also be an essential element in facilitating the review by the CONTRACTING PARTIES of the operation of Article XVI.

7. Annex B to this report contains the text, in slightly modified form, of the questionnaire drawn up by the CONTRACTING PARTIES at the ninth session, which it is suggested should be examined together with this report.

8. The Panel addressed itself to a study of the extent to which production subsidies and price support measures in the sense of Article XVI directly or indirectly affect exports or imports and are therefore notifiable under that Article; and considered whether subsidies (including income and price support) which in the opinion of a contracting party did not increase exports or reduce imports should be notified.

9. The Panel emphasizes that subsidies as such are not forbidden by Article XVI. The General Agreement specifically provides for subsidies but contracting parties are required to notify measures which have the effect specified in paragraph 1 of Article XVI; and if the subsidy is excessive or leads to serious prejudice to the interests of other contracting parties, other procedures, such as consultation, may follow.

10. The obligation to notify subsidies relates to those measures which operate "directly or indirectly to increase exports of any product from, or to reduce imports of any product into" the territory of a contracting party. This obligation applies even when subsidies do not lead to an increase in exports if in fact they lead to a relative reduction in imports. In the opinion of the Panel, the question of increased exports or reduced imports cannot be considered only in an historical sense.

11. In this connexion the Panel had in mind the following interpretation of the CONTRACTING PARTIES:

"The phrase 'increased exports' in line 3 of Article XVI of the General Agreement was intended to include the concept of maintaining exports at a level higher than would otherwise exist in the absence of the subsidy, as made clear in line 3 of Article 25 of the Havana Charter;"

(BISD, Volume II, page 44, paragraph 29(a)). Mutatis mutandis this ruling applies with force to the effect on imports. The criterion is therefore what would happen in the absence of a subsidy. While it is agreed that in most cases such

effects cannot be measured only by reference to statistics, nevertheless, a statistical analysis helps to discern the trend of imports and exports and assists in determining the effects of a subsidy. The Panel considers that - unless proof to the contrary is provided - a subsidy will provide an incentive to production which, in the absence of other factors, will either increase exports or reduce imports.

12. In this context the Panel discussed measures fixing above the world market level the price at which a commodity - whether imported or domestically produced - may be sold in its territory. Such a measure would not, in principle, envisage any financial disbursement or financial loss; there would merely be an obligation to sell in the domestic market at the fixed price. In itself the measure would not therefore constitute a subsidy (unless one wanted to go as far as to say that domestic production was subsidized by each individual consumer). There was some discussion of whether such a measure constituted a form of price support within the meaning of Article XVI. The majority of members of the Panel considered that this was not necessarily so: the determining factors being that there was no financial disbursement or loss incurred by the government in the operation of the scheme. In their view the fundamental characteristic was the necessary recourse to import restriction in order to maintain the fixed price. As such the measure would, therefore, be governed by the provisions of the Agreement relating to quantitative restrictions. It became clear, however, from the discussion that the operation of such schemes would in certain, not unlikely, circumstances give rise to some form of financial aid or loss by the government. In fact, since the price was guaranteed by the government any surplus of domestic production which could not find its way into the market at the fixed price would have to be purchased at that price by the government and at government expense. Stocking expenses borne by the government would, in themselves, constitute financial aid. Moreover, if at the time the government was able to dispose of its stock the sale price had been fixed at a level lower than when the stock was accumulated, the loss suffered by the government would certainly constitute a subsidy. It is not the view of the Panel that such cases as these would in practice necessarily result in forms of subsidization; it is, however, felt that they constitute a further example of the need to notify under Article XVI measures which from a superficial examination might appear to fall outside the provision of that Article.

13. The Panel examined the question whether subsidies financed by a non-governmental levy was notifiable under Article XVI. It felt that in view of the many forms which action of this kind could take, it would not be possible to draw a clear line between types of action which were and those which were not notifiable. It agreed generally that no obligation was incumbent upon governments to notify schemes in which a group of producers voluntarily taxed themselves in order to subsidize exports of a product. The GATT did not concern itself with such action by private persons acting independently of their governments except insofar as it allowed importing countries to apply anti-dumping duties under the terms of Article VI. On the other hand, it had no doubt that there was an obligation to notify all schemes of levy/subsidy affecting imports or exports in which the government took a part either by making payments into the common fund or by giving powers or privileges to the collecting body which enable it to take action which private bodies on their own would not otherwise be able to take. In certain cases in fact the government's part in the scheme would be that of entrusting to a private body the functions of taxation and subsidization with the result that the practice would in no real sense differ from those normally followed by governments.

In view of these considerations the Panel feels that the question of notifying levy/subsidy arrangements depended upon the source of the funds and the extent of government intervention, if any, in their collection. Therefore, while a precisely worded recommendation would not in the circumstances be appropriate, governments should be asked by the CONTRACTING PARTIES to notify all levy/subsidies schemes affecting imports or exports which are dependent for their enforcement on some form of government intervention.

14. In the course of its examination of notifications, the Panel noted that some contracting parties had interpreted approval by the International Monetary Fund of multiple exchange arrangements as absolving them from the obligation to notify such arrangements under Article XVI. The Panel wished to record its view that interpretative note 1 to Section B of Article XVI was intended not to preclude the use by a country of multiple exchange rates which were approved by the International Monetary Fund, but that there was a clear obligation to notify to

the CONTRACTING PARTIES multiple exchange rates which have the effect of a subsidy. In this connexion the Panel noted paragraph 21 of the Report of Working Party III at the Review Session (BISD, Third Supplement, page 226).

15. The Panel has collected a good deal of information both in the form of notifications of contracting parties and through the discussion of points thrown up in the examination thereof which have been reported to the CONTRACTING PARTIES for their consideration. It expresses the hope that further information will be provided in the periodical notifications which it is expected will be received this year. In order to have the most complete information possible the Panel recommends that governments which consider that no measures or schemes existing in their countries require notification should so inform the Executive Secretary in writing.

16. More work will need to be done by the Panel particularly on the question of the effects of subsidies. The full material collected will need examination by the Panel. In view of this and of the time-table of the CONTRACTING PARTIES the Panel does not feel it can meet again before the spring of 1961. By that time, it may be mentioned, further information may have become available through the consultations which are being conducted by Committee II. At that meeting, the Panel would envisage examining the latest information against the background of Article XVI in order to prepare its final report to the eighteenth session of the CONTRACTING PARTIES. In compliance with the request of the CONTRACTING PARTIES the Panel accordingly recommends that the review of the operation of Article XVI take place at the eighteenth session.